

1994

Salt Lake City v. Roberto Vasquez : Brief of Appellant

Utah Court of Appeals

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Mr. Todd J. Godfrey; Assistant SLC Prosecutor.

Mr. Roberto Vasquez; Defendant (Pro Se).

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FILED
Utah Court of Appeals

AUG 29 1994

Marilyn M. Branch
Clerk of the Court

IN THE UTAH COURT OF APPEALS

)	CASE NOS
SALT LAKE CITY,)	
Plaintiff and Appellee,)	UTAH COURT OF APPEALS
)	No. 940019-CA
vs.)	Priority No. 10
)	THIRD CIRCUIT COURT
ROBERTO VASQUEZ,)	SALT LAKE CITY DEPT.
Defendant and Appellant.)	No. 931008026 MC
)	

BRIEF OF DEFENDANT - APPELLANT

AN INTERLOCUTORY APPEAL FROM AN ORDER ENTERED
IN THE THIRD CIRCUIT COURT FOR SALT LAKE COUNTY,
SALT LAKE CITY DEPARTMENT, STATE OF UTAH.
THE HONORABLE JUDITH S.H. ATHERTON, PRESIDING.

MR. ROBERTO VASQUEZ
Defendant (Pro se)
P.O. BOX 2693
SLC., UT. 84110-2693

MR. TODD J. GODFREY
Assistant SLC., Prosecutor
451 South 200 East, #125
Salt Lake City, Utah 84111

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BRIEF OF DEFENDANT - APPELLANT

COMES NOW THE DEFENDANT/APPELLANT (hereinafter "defendant" or "Mr. Vasquez") and hereby submits the following as his APPELLATE BRIEF in the above-captioned matter:

STATEMENT OF JURISDICTION

Jurisdiction is conferred upon the Utah Court of Appeals in this matter pursuant to Rule 5 of the Utah Court of Appeals; and 78-2a-3(2), Utah Code Annotated, 1953.

STATUTES AND CONSTITUTIONAL PROVISIONS

The pertinent parts of the following rules, statutes and constitutional provisions are provided in Appendix A:

Utah Code Ann. Section 76-1-501
Utah Code Ann. Section 77-1-6
Utah Code Ann. Section 77-32-1
Utah Code Ann. Section 77-32-2
Utah Code Ann. Section 78-2a-3 (2) (d)
Amendment IV, VI, XIV, United States Constitution
Article 1, Section 7 and 12, Utah Constitution

STATEMENT OF THE ISSUES

1. This is an interlocutory appeal from an order denying Defendant's request to be represented by counsel.
2. The key issue is whether the lower court abused its discretion by denying my request to be appointed counsel to represent me in my case.

STATEMENT OF THE CASE/FACTS

On June 12, 1993, I was charged by Salt Lake Police Officers with the crime of soliciting sex, a Class C misdemeanor. On October 18, 1993, a hearing was held on my motion to dismiss the case on an entrapment defense. The entrapment motion was denied and at the conclusion of the hearing Mr. Breeze, my attorney, moved the court to allow him to withdraw as my counsel.

At a pre-trial hearing on January 10, 1994, I appeared without counsel and requested that the court appoint counsel to represent me. The court, The Honorable Commissioner Judith S. Atherton presiding, denied my request. Before this time, I had made numerous other requests to Commissioner Atherton in the court room and in the form of certified letters dated Aug. 3, and 12, 1993 and once again in December of 1993 that I be appointed counsel to represent me in my case. Up to this time Commissioner Atherton has yet to respond to any of my requests.

SUMMARY OF ARGUMENT

The court, The Honorable Commissioner Judith S. Atherton, presiding has refused to appoint counsel to represent me in my case. I contend that I have a constitutional right to be represented by counsel. I cite SUPREME COURT decisions Gideon vs Wainwright, and Argersinger vs Hamlin, as the reasons and justification why I should be appointed counsel to represent me in my case. These two landmark SUPREME COURT decisions specifically and unequivocally enforce the Constitutional right to legal counsel for defendants who cannot afford to engage an attorney on their own.

DETAIL OF THE ARGUMENT

I contend that I have a constitutional right to be represented by counsel. I cite SUPREME COURT decisions Gideon vs Wainwright, and Argersinger vs Hamlin, as the reasons and justification why I should be appointed counsel to represent me in my case. These two landmark SUPREME COURT decisions specifically and unequivocally enforce the Constitutional right to legal counsel for defendants who cannot afford to engage an attorney on their own.

In addition I would like to cite the 6th Amendment of the U.S. Constitution which clearly states, " In all criminal prosecutions the accused shall enjoy the right..... to have the assistance of counsel in his defense." Furthermore, the 6th Amendment's right to counsel is, " applicable to the states through the due process clause of the fourteenth Amendment." The State of Utah also specifically guarantees the appointment of Counsel to those defendants who cannot afford it. (77-32-1, 77-32-2, Utah Code Ann.)

DETAIL OF THE ARGUMENT CONTINUED

The State of Utah proscribes the appointment of counsel, unless there is a "substantial probability of the deprivation of liberty." (77-32-1, Utah Code Ann.) In my case, a Class C misdemeanor can carry a fine of \$750.00 and 3 months in jail. These probable sanctions by themselves should justify the appointment of an attorney. In addition, if found guilty, the judge can also order probation and impose other restrictions which do egregiously impinge on a person's freedom and personal liberties. In fact, some of these alternate sentences can place restrictions on the liberty of the individual which are almost as severe as a jail sentence itself.

These same restrictions, which include probation and fines, if violated can cause the defendant to be fined and imprisoned (incarcerated). This totally negates Utah's assertion/ contention that, "no imprisonment/incarceration" will be imposed on a defendant who was not appointed counsel, because a court finds that the defendant did not, "face a substantial probability of deprivation of liberty." (Rule 8, Utah Rules of Criminal Procedure) Furthermore, a conviction and a criminal record in a case such as this can be detrimental to a person's reputation, as well as have an adverse effect on his personal, social, and vocational life.

DETAIL OF THE ARGUMENT CONTINUED

I will concur that I have been given time to prepare my defense. The key issue however, is that as an ordinary citizen, I am not versed with legal, judicial and court procedures, rules, techniques, and methods and therefore unable to prepare my defense in a legally proper and correct manner. Hence, I would be at a serious disadvantage to go before a jury trial without preparation and without legal counsel to represent me.


In the other hand, I will be facing in court a able, experienced, powerful, and professional prosecutor versed in court procedures, and legal technology and engineering who has had the time to legally and judicially organize and prepare a case against me in the same precise and meticulous manner a CPA would conduct a highly technical and specialized audit for the (IRS).

Even still, I have been empathically denied the legal counsel I will need to adequately prepare my defense in a timely fashion and in a legally and judicially correct manner. To allow me to go before an American Court on a Jury Trial without legal representation and advice is truly an outrage. This is not only a blatant assault on my civil and constitutional rights, but also makes a mockery of our American Justice System.

CONCLUSION

For the above reasons, I respectfully move the UTAH APPEALS COURT to overturn Commissioner Atherton's order to deny my request for counsel, that she appoint Counsel as soon as possible to represent me in my case and that I, as the appellant, be afforded any and all relief to which this court finds me entitled to.

DATED this 29th day of August, 1994.


MR. ROBERTO VASQUEZ, (PRO SE)

CERTIFICATE OF DELIVERY/MAILING

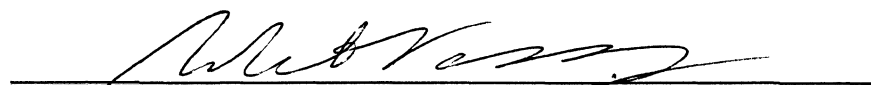
I certify I mailed/hand delivered/faxed 8 copies, including one with an original signature of the foregoing to:

Miss Mary Noonan, Clerk for
THE UTAH [SUPREME COURT]
[COURT OF APPEALS]
230 S. 500 EAST SUITE 400
Salt Lake City, Utah 84111

AND 2 copies of the foregoing to:

Mr. Todd J. Godfrey
Assistant S.L. City Prosecutor
451 South 200 East, #125
Salt Lake City, Utah 84111

DATED on this 29th day of August, 1994.


MR. ROBERTO VASQUEZ, Defendant, (pro se)

APPENDIX A

APPENDIX A

DETERMINATIVE CONSTITUTIONAL PROVISIONS, STATUTES AND RULES.

CONSTITUTION OF THE UNITED STATES OF AMERICA

AMENDMENT VI: (Rights of accused)

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall be committed, which district shall have been previously ascertained by law, and to be confronted with the witnesses in his favor, and to have the Assistance of counsel for his defense.

AMENDMENT XIV: (Citizenship - Due process of law - Equal protection)

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; or shall any State deprive any person of life, liberty, or property, due process of law; nor deny to any person within its jurisdiction the equal protection of the law.

CONSTITUTION OF THE STATE OF UTAH (In applicable parts)

Article I; Section 12: Rights of accused persons

In all criminal prosecutions the accused shall have the right to appear and defend in person and by counsel, to demand the nature and cause of the accusation against him, to have a copy thereof, to testify in his own behalf, to have a speedy public trial by an impartial jury of the county or district in which the offense is alleged to be committed, and the right of appeal in all cases. In no instance shall any accused person, before final judgment, be compelled to advance money or fees to secure the rights herein guaranteed. The accused shall not be compelled to give evidence against himself; a wife shall not be compelled to testify against her husband, nor a husband against the wife, nor shall any person be twice put in jeopardy for the same offense.

UTAH CODE ANNOTATED
(In applicable parts)

Section 76-1-501

(1) A defendant in a criminal proceeding is presumed to be innocent until each element of the offense charged against him is proven beyond a reasonable doubt. In the absence of such proof, the defendant shall be acquitted.

Section 77-1-6: Rights of the defendant

(1) In criminal prosecutions the defendant is entitled:

- (a) To appear in person and defend in person by counsel;
- (b) To receive a copy of the accusation filed against him;
- (c) To testify in his own behalf.
- (d) To confront the witnesses testifying against him.
- (e) To have compulsory process to insure attendance of the witnesses in his behalf.
- (f) To speedy trial by an impartial jury of the county or district where the offense is alleged to have been committed;
- (g) To be admitted to bail in accordance with the provisions of law, to be entitled to a trial within 30 days after arraignment if unable to post bail and if the business of the court permits.

Section 77-32-1: Counsel for indigent defendants

- (1) Provide counsel for every indigent person who faces the substantial probability of the deprivation of his liberty.
- (2) Afford timely representation by competent legal counsel;
- (4) Assure undivided loyalty of defense counsel to the client;
- (5) Include the taking of first appeal of right and the prosecuting of other remedies before or after a conviction, considered by the defending counsel to be in the interest of justice except for other and subsequent discretionary appeals or discretionary writ proceedings.

UTAH CODE ANNOTATED CONTINUED
(In applicable parts)

Section 77-32-1: Assignment of Counsel

Counsel shall be assigned to represent indigent person who is under arrest for or charged with a crime in which there is a substantial probability that the penalty to imposed is confinement in either jail or prison if:

- (1) The defendant requests it;or**
- (2) The court on its own motion or otherwise so orders and the defendant does not affirmatively waive or reject of**

Section 78-2a-3(2) (d)

- (2) The Court of Appeals has appellate jurisdiction, including jurisdiction of interlocutory appeals, over:**
 - (d) Appeals from the circuit courts, except those from the small claims department of a circuit court.**

ADDENDUM PART ONE

ARGERSINGER v. HAMLIN, SHERIFF

CERTIORARI TO THE SUPREME COURT OF FLORIDA

No. 70-5015. Argued December 6, 1971—Reargued February 28,
1972—Decided June 12, 1972

The right of an indigent defendant in a criminal trial to the assistance of counsel, which is guaranteed by the Sixth Amendment as made applicable to the States by the Fourteenth, *Gideon v. Wainwright*, 372 U. S. 335, is not governed by the classification of the offense or by whether or not a jury trial is required. No accused may be deprived of his liberty as the result of any criminal prosecution, whether felony or misdemeanor, in which he was denied the assistance of counsel. In this case, the Supreme Court of Florida erred in holding that petitioner, an indigent who was tried for an offense punishable by imprisonment up to six months, a \$1,000 fine, or both, and given a 90-day jail sentence, had no right to court-appointed counsel, on the ground that the right extends only to trials "for non-petty offenses punishable by more than six months imprisonment." Pp. 27-40.

336 So. 2d 442, reversed.

DOUGLAS, J., delivered the opinion of the Court, in which BRENNAN, STEWART, WHITE, MARSHALL, and BLACKMUN, JJ., joined. BRENNAN, J., filed a concurring opinion, in which DOUGLAS and STEWART, JJ., joined, *post*, p. 40. BURGER, C. J., filed an opinion concurring in the result, *post*, p. 41. POWELL, J., filed an opinion concurring in the result, in which REHNQUIST, J., joined, *post*, p. 44.

Bruce S. Rogow argued the cause for petitioner on the reargument and J. Michael Shea argued the cause *pro hac vice* on the original argument. With them on the brief was P. A. Hubbard.

George R. Georgieff, Assistant Attorney General of Florida; reargued the cause for respondent. With him on the brief were Robert L. Shevin, Attorney General, and Raymond L. Marky, Assistant Attorney General, joined by the Attorneys General for their respective States as follows: Gary K. Nelson of Arizona, Arthur K.

Opinion of the Court

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Supreme Court by a four-to-three decision, in ruling on the right to counsel, followed the line we marked out in *Duncan v. Louisiana*, 391 U. S. 145, 159, as respects the right to trial by jury and held that the right to court-appointed counsel extends only to trials "for non-petty offenses punishable by more than six months imprisonment." 236 So. 2d 442, 443.¹

The case is here on a petition for certiorari, which we granted. 401 U. S. 908. We reverse.

The Sixth Amendment, which in enumerated situations has been made applicable to the States by reason of the Fourteenth Amendment (see *Duncan v. Louisiana, supra*; *Washington v. Texas*, 388 U. S. 14; *Klopfer v. North Carolina*, 386 U. S. 213; *Pointer v. Texas*, 380 U. S. 400; *Gideon v. Wainwright*, 372 U. S. 335; and *In re Oliver*, 333 U. S. 257), provides specified standards for "all criminal prosecutions."

¹ For a survey of the opinions of judges, prosecutors, and defenders concerning the right to counsel of persons charged with misdemeanors, see 1 L. Silverstein, *Defense of the Poor in Criminal Cases in American State Courts* 127-135 (1965).

A review of federal and state decisions following *Gideon* is contained in Comment, *Right to Counsel: The Impact of Gideon v. Wainwright in the Fifty States*, 3 Creighton L. Rev. 103 (1970).

Twelve States provide counsel for indigents accused of "serious crime" in the misdemeanor category. *Id.*, at 119-124.

Nineteen States provide for the appointment of counsel in most misdemeanor cases. *Id.*, at 124-133. One of these is Oregon, whose Supreme Court said in *Stevenson v. Holzman*, 254 Ore. 94, 100-101, 458 P. 2d 414, 418, "If our objective is to insure a fair trial in every criminal prosecution the need for counsel is not determined by the seriousness of the crime. The assistance of counsel will best avoid conviction of the innocent—an objective as important in the municipal court as in a court of general jurisdiction."

California's requirement extends to traffic violations. *Blake v. Municipal Court*, 242 Cal. App. 2d 731, 51 Cal. Rptr. 771.

Overall, 31 States have now extended the right to defendants charged with crimes less serious than felonies. Comment, *Right to Counsel, supra*, at 134.

While there is historical support for limiting the "deep commitment" to trial by jury to "serious criminal cases,"² there is no such support for a similar limitation on the right to assistance of counsel:

"Originally, in England, a person charged with treason or felony was denied the aid of counsel, except in respect of legal questions which the accused himself might suggest. At the same time parties in civil cases and persons accused of misdemeanors were entitled to the full assistance of counsel. . . .

"[It] appears that in at least twelve of the thirteen colonies the rule of the English common law, in the respect now under consideration, had been definitely rejected and the right to counsel fully recognized in all criminal prosecutions, save that in one or two instances the right was limited to capital offenses or to the more serious crimes" *Powell v. Alabama*, 287 U. S. 45, 60, 64-65.

The Sixth Amendment thus extended the right to counsel beyond its common-law dimensions. But there is nothing in the language of the Amendment, its history, or in the decisions of this Court, to indicate that it was intended to embody a retraction of the right in petty offenses wherein the common law previously did require that counsel be provided. See *James v. Headley*, 410 F. 2d 325, 331-332, n. 9.

We reject, therefore, the premise that since prosecutions for crimes punishable by imprisonment for less than

² See Frankfurter & Corcoran, *Petty Federal Offenses and the Constitutional Guaranty of Trial by Jury*, 39 Harv. L. Rev. 917, 980-982 (1926); *James v. Headley*, 410 F. 2d 325, 331. Cf. *Kaye*, *Petty Offenders Have No Peers!*, 26 U. Chi. L. Rev. 245 (1959).

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six months may be tried without a jury, they may also
be tried without a lawyer.

The assistance of counsel is often a requisite to the
very existence of a fair trial. The Court in *Powell v.*
Alabama, supra, at 68-69—a capital case—said:

"The right to be heard would be, in many cases, of
little avail if it did not comprehend the right to be
heard by counsel. Even the intelligent and edu-
cated layman has small and sometimes no skill in
the science of law. If charged with crime, he is
incapable, generally, of determining for himself
whether the indictment is good or bad. He is un-
familiar with the rules of evidence. Left without
the aid of counsel he may be put on trial without
a proper charge, and convicted upon incompetent
evidence, or evidence irrelevant to the issue or other-
wise inadmissible. He lacks both the skill and
knowledge adequately to prepare his defense, even
though he have a perfect one. He requires the
guiding hand of counsel at every step in the pro-
ceedings against him. Without it, though he be
not guilty, he faces the danger of conviction be-
cause he does not know how to establish his inno-
cence. If that be true of men of intelligence, how
much more true is it of the ignorant and illiterate,
or those of feeble intellect."

In *Gideon v. Wainwright, supra* (overruling *Betts v.*
Brady, 316 U. S. 455), we dealt with a felony trial.
but we did not so limit the need of the accused for a
lawyer. We said:

"[I]n our adversary system of criminal justice,
any person haled into court, who is too poor to hire
a lawyer, cannot be assured a fair trial unless coun-
sel is provided for him. This seems to us to be an
obvious truth. Governments, both state and fed-

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tion in such a court with the movement of cases. The calendar is long, speed often is substituted for care, and casually arranged out-of-court compromise too often is substituted for adjudication. Inadequate attention tends to be given to the individual defendant, whether in protecting his rights, sifting the facts at trial, deciding the social risk he presents, or determining how to deal with him after conviction. The frequent result is futility and failure. As Dean Edward Barrett recently observed:

"Wherever the visitor looks at the system, he finds great numbers of defendants being processed by harassed and overworked officials. Police have more cases than they can investigate. Prosecutors walk into courtrooms to try simple cases as they take their initial looks at the files. Defense lawyers appear having had no more than time for hasty conversations with their clients. Judges face long calendars with the certain knowledge that their calendars tomorrow and the next day will be, if anything, longer, and so there is no choice but to dispose of the cases.

"Suddenly it becomes clear that for most defendants in the criminal process, there is scant regard for them as individuals. They are numbers on dockets, faceless ones to be processed and sent on their way. The gap between the theory and the reality is enormous.

"Very little such observation of the administration of criminal justice in operation is required to reach the conclusion that it suffers from basic ills."

That picture is seen in almost every report. "The misdemeanor trial is characterized by insufficient and frequently irresponsible preparation on the part of the defense, the prosecution, and the court. Everything is rush, rush." Hellerstein, The Importance of the Mis-

demeanor Case on Trial and Appeal, 28 The Legal Aid
Brief Case 151, 152 (1970).

There is evidence of the prejudice which results to
misdemeanor defendants from this "assembly-line jus-
tice." One study concluded that "[m]isdemeanants rep-
resented by attorneys are five times as likely to emerge
from police court with all charges dismissed as are
defendants who face similar charges without counsel."
American Civil Liberties Union, Legal Counsel for Mis-
demeanants, Preliminary Report 1 (1970).

We must conclude, therefore, that the problems as-
sociated with misdemeanor and petty⁵ offenses often

⁵ Title 18 U. S. C. § 1 defines a petty offense as one in which the penalty does not exceed imprisonment for six months, or a fine of not more than \$500, or both. Title 18 U. S. C. § 3006A (b) provides for the appointment of counsel for indigents in all cases "other than a petty offense." But, as the Court of Appeals for the Fifth Circuit noted in *James v. Headley*, 410 F. 2d, at 330-331, 18 U. S. C. § 3006A, which was enacted as the Criminal Justice Act of 1964, contains a congressional plan for furnishing legal representation at federal expense for certain indigents and does not purport to cover the full range of constitutional rights to counsel.

Indeed, the Conference Report on the Criminal Justice Act of 1964 made clear the conferees' belief that the right to counsel extends to all offenses, petty and serious alike. H. R. Conf. Rep. No. 1709, 88th Cong., 2d Sess. (1964).

In that connection, the Federal Rules of Criminal Procedure, as amended in 1966, provide in Rule 44 (a): "Every defendant who is unable to obtain counsel shall be entitled to have counsel assigned to represent him at every stage of the proceedings from his initial appearance before the commissioner or the court through appeal, unless he waives such appointment."

The Advisory Committee note on Rule 44 says: "Like the original rule the amended rule provides a right to counsel which is broader in two respects than that for which compensation is provided in the Criminal Justice Act of 1964:

"(1) The right extends to petty offenses to be tried in the district courts, and

"(2) The right extends to defendants unable to obtain counsel
for reasons other than financial."